

SPEECH

OF

HON. J. THOMPSON, OF MISSISSIPPI,

IN THE HOUSE OF REPRESENTATIVES, JUNE 27, 1848,

Delivered in Committee of the Whole on the state of the Union, on the power of the General Government over Slavery in the Territories.

Mr. THOMPSON said:

Mr. CHAIRMAN: On yesterday the gentleman from Pennsylvania [Mr. STEWART] made a most singular speech on the relative merits of the candidates for the Presidency. The errors of that speech are of easy confutation, as they consist of a misstatement of history, a misconstruction of laws which have received the sanction of this body, and an imputation and insinuation upon the personal integrity of a distinguished patriot who has been honorably engaged in the public service for more than forty years. Such an attack was to be expected from such a quarter. A cause which requires such instruments and such means to sustain it, must be weak indeed. But it is not my purpose now to pursue and expose his unhallowed perversions of facts and unjust imputations. There will be time enough for that hereafter. I desire to speak to another question of absorbing interest, so engrossing in the public mind as well-nigh to overshadow the Presidential election itself. I wish to submit an argument on the power of this Government over the subject of slavery.

Ever since I have been a member of this House, slavery, in some shape or other, has been a subject of discussion. This topic has been introduced in season and out of season; and, with all proper respect for the motives of others, I have believed Representatives from the North and from the South have sought to agitate this question with sinister motives, for the purpose of effecting political objects. At no time have I allowed myself to be drawn into this discussion. I have deprecated this appeal to the passions and prejudices of our countrymen, north or south. My constituents have too large and deep an interest in this institution to admit of my touching the subject lightly, or with a view to control a political election. I have scorned to reason with fanatics as to my right to my property, the morality of holding slaves, and its supposed bad effects upon society. Mississippi came into this Union with a knowledge of the provisions of the Constitution; with a confidence that so far as power had been delegated to Congress, it would be exercised for the protection of the rights of person and property in their full integrity; and the very day or hour when this Government fails to justify that confidence, and

uses the power therein vested to endanger her safety, to curtail her rights, to surround her with institutions which will render insecure her property, that day and that hour she bids you adieu. As long as she remains in this Union she intends to be an equal; she will be equal in rights, privileges, and immunities, with her confederate States. Her citizens will submit to no discriminations against them; her people will claim their equal right to all the benefits arising from the onward progress of this Government, in the extension of her boundaries, while they submit to the unequal and heavy burdens imposed upon them by your indirect system of taxation. We have submitted to be plundered by your protective tariffs, but, after that has been borne, lay not the flattering unction to your souls that we will submit quietly to insult and degradation.

You claim the power, and express the determination, to pass the Wilmot proviso over all the vast territory now held by the United States, and virtually exclude every Mississippian, with his household, from the occupancy of one solitary acre in all your broad possessions. I beseech you not to act lightly and without due consideration. Do not be deceived. The South is often accused of following abstractions; but here is a northern abstraction which, being enforced, will work incalculable and irreparable mischief. Add this condition to the possession of your territories, and thus deny to the southern States and their citizens that equality which is their birthright, and the days of this Confederacy are numbered. All our divisions in the South will be healed in a twinkling, and that southern man who doubts as to resistance is damned, and he that submits is a traitor and a dastard. The supposition that any southern man who, to get office, will submit to this discrimination against him and his neighbors is chimerical and absurd: believe it not that you will find a traitor there. I do not intend to deal in any unmeaning gasconade. I wish gentlemen to understand the position in which we are placed. Let them not be misled by the vote, at the beginning of the session, of southern men for a Wilmot proviso. Speaker, into the supposition that we are not in good earnest when we say that we will not acquiesce in your unequal legislation, which leads to

an exclusion of us from all participation in a common property.

But a great difference of opinion is entertained, and has been expressed, as to the extent of the power of Congress to legislate for your Territorial Governments. And I shall proceed to express my opinions with frankness, and with as much precision as the nature of the question will admit of. But before proceeding to my argument, I wish to call the attention of the committee to a resolution adopted in the Virginia Legislature, which was read a few days since in committee, and is generally approved of by the people of the whole South.

A resolution of the Virginia Legislature:

"Resolved, unanimously, That under no circumstances will this body recognize as binding any enactment by the Federal Government which has for its object the prohibition of slavery in any territory to be acquired either by conquest or treaty; holding it to be the natural and indefeasible right of each and every citizen of every State of this Confederacy to reside, with his property of whatever description, in any territory which may be acquired by the arms of the United States, or yielded by treaty with any foreign Power."

Other Legislatures and public meetings in the southern States have readopted and endorsed the principles set forth in this resolution. They express my own opinions on this subject.

It is conceded on all hands, by men of all parties, that Congress can exercise only delegated powers. Congress possesses no inherent, but only such incidental powers as are necessary and proper to carry out the delegated powers. Our jealous ancestors, to avoid all misapprehension and dispute in this respect, inserted this distinct declaration:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively and to the people."

As a clear incident to the power to make war, to conclude treaties, to provide and maintain a navy, this Government possesses the power to acquire territory by conquest, by purchase, and by discovery. But when acquired, is it a still further incident that this Government possesses over it an unlimited and absolute legislation, or an exclusive jurisdiction? This has been insisted upon by several gentlemen with great ingenuity, but its absurdity is too transparent to require serious refutation. The second clause of the 6th article of the Constitution answers the question:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

The very moment, therefore, a Territory is added, by any of the means above referred to, to this Government, it becomes a part of the "land" over which the Constitution, the laws, and the treaties above named extend as the supreme law. To make this proposition still more self-evident, I will take a single case of personal privilege secured to the citizen. The third clause of the 2d section of the 3d article is in these words:

"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed."

The right of trial by jury for crime is secured to the citizen, wherever he may be found in the whole length and breadth of our country. It is

the right of an American citizen anywhere upon the American soil.

Again:

"Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

These examples might be greatly multiplied; but I will not suppose that any member but the gentleman from Indiana [Mr. PERRIN] will pretend to go so far as to assert that our power over the American citizen, because he may be caught out of the limits of a State, is absolute and unrestricted. Nor can I suppose the gentleman from Massachusetts [Mr. HUDSON] will be sustained in the assertion made by him, that Congress possesses all power in the Territories not prohibited in the Constitution, when the doctrine so universally prevails that Congress can exercise only delegated powers.

When territory is acquired, then what is its condition? The Constitution, the laws made in pursuance thereof, and the treaties of the United States, become the supreme law of the land. The ultimate sovereignty and the primary source of all power in this country is in and from the people of the respective States. The power they have not delegated is reserved to the States, or still reposes with the people. Congress is the source of no power. It is the mere repository of powers given, and whatsoever is conferred must be exercised by that body—cannot be declined or transferred. To ascertain the extent of the power of Congress over the unorganized country, we must look to that glorious instrument. It provides that—

*"New States may be admitted by the Congress into this Union." * * * "Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States." * * * "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." * * * "Congress shall have power to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States; and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same may be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."*

This is a full and complete summary of all the power which bears upon this subject, either directly or remotely conferred upon Congress by this great fundamental charter of our liberties. The question now to be answered is, does Congress possess the power and the right to legislate for the people of the Territories? If so, place your finger upon the grant. Is it a necessary incident to any of the powers granted? and if so, which phrase carries with it an incident so magnificent?

To regulate commerce with the Indian tribes, has authorized and, in the exercise of that authority, led to, the adoption of our intercourse laws with the various tribes who occupy our territory, to the establishment of agencies and superintendencies, and other rules and regulations for the safety and peace of the Indians and the whites. But no one has claimed for Congress the power to change the forms of government, or abolish their accepted and approved customs.

Again: "New States may be admitted by the

Congress into this Union." Under this grant, I presume no one would be absurd enough to contend that Congress had the authority to create, to make a new State, to prescribe the exact form of its constitution, the powers to be exercised by its Executive, its Legislature, or its Judiciary. This assumption would be preposterous. When a new State applies for admission, she exhibits her constitution, her system of government; and as "the United States shall guaranty to every State in this Union a republican form of government," Congress cannot change her government, cannot force her into republicanism. All the discretion and authority possessed is, to refuse admission till the State complies with this condition precedent. But the change is made by the people of the new State, not by Congress.

This brings us directly to the inquiry: where does the power reside to legislate for the people of a Territory prior to its application for admission into this Union? I conceive that it is demonstrated, that when any body of men, or community of individuals, residing upon the public domain, band themselves together and adopt a form of government, and apply for admission into this sisterhood of States, they, and they alone, are the framers of that government, without interference, without molestation from any quarter. There is a time, then, a period prior to their possession of the rights, privileges, and dignity of a sovereign State of this Union, when they can meet together and exercise this high prerogative.

But, sir, the power to legislate for the Territories is said by all who have claimed it for this body to be included in this grant:

"The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States."

Here we must observe the exact expression, "territory or other property." In the singular number, in the connection in which it is placed, it means *public land* as property. There are no such things as *territories belonging* to the United States; for this word, in the plural number, implies governments, communities; and it is contrary to our whole system to suppose Congress is absolute, unlimited, sovereign anywhere—a feudal lord, doling out fiefs to his liege serfs. In the vast country which we have acquired, the Government of the United States is the land owner, possesses the fee simple, and no title is valid which is not derived from its consent or sanction previously given. The United States has the power of a land owner. It can survey, establish land offices, fix prices, prevent waste, remove trespassers, grant preëmptions, and do all other things which may be necessary to render this immense property available to the public treasury. Under this power, however, Congress would act in bad faith to the people of the United States to refuse or neglect to make the necessary rules and regulations for the sale and disposition of the public lands. It is a common property, and Congress is the trustee for all the States. To erect a barrier which effectually prevents the entrance of the people, or any portion of them, upon this common property, when they agree to pay for the same what is reasonable, would be a gross breach of good faith, whatever may be the promptings of such a measure. But to claim under this clause the power to make all needful rules and

regulations for the government of the people residing upon this territory—to enter into that community, who have no voice, no rights here, to control the relations of husband and wife, parent and child, master and servant, to direct the descent of property, and in all other respects to define the rights of person and property—is a monstrosity. Whatever power was vested in the first Congress is vested in this. There can be no such thing as power wasting away; and I assert, that if Congress, by virtue of this clause, ever possessed this power in the Mississippi Territory, it possesses it now in the State of Mississippi. Whatever power Congress possesses, by virtue of this clause, in the Territory of Oregon or Minnesota, it possesses in Illinois and Missouri, where more than half the lands of those States are now owned by the United States. By virtue of this power, Congress, through its agents, is now surveying public lands in Mississippi. It has its land offices, has its agents for the protection of the live oak and other valuable timber on the public lands, and it is doing all other things which are deemed necessary for the sale and disposition of the territory belonging to the United States. It is true, that Mississippi, before her admission into this Union, did "disclaim all right and title to the waste and unappropriated lands lying within the said Territory," and agreed "that the same shall be and remain at the sole and entire disposition of the United States, and that no taxes shall be imposed on lands the property of the United States." Why was this agreement, this condition precedent, exacted? Because it was feared, perhaps believed, that when Mississippi became a sovereign State, she would become, by virtue of her sovereignty, entitled to all the waste or unappropriated lands lying within her limits, and Congress, *ipso facto, eo instanti*, divested of her title to the fee simple. But this agreement neither diminished nor enlarged the power of Congress under the clause under consideration. It only enabled Congress to exercise all of its power over this subject in its entirety, in its full integrity, without dispute, without molestation or hindrance. And all the power it ever possessed over this subject it now possesses and exercises, and no agreement between the State of Mississippi and the General Government can enlarge or diminish the powers of Congress under the Constitution.

If, then, Congress has exclusive jurisdiction over the Territories, and possesses all legislative power over the same, we must hunt up some other claim, some other principle, upon which to hang our authority. Why was not a bill of rights appended to the Constitution? This question was often asked about the time of the adoption of our present Constitution, and there was but one reply, and that was satisfactory, because it was conclusive. Ours is a Government of enumerated powers; whatsoever is not enumerated, is retained. Had a bill of rights been attached, the implied result would have been, that whatsoever was not enumerated, was given under its general powers. Upon this principle, the statement or enumeration of the power of exclusive legislation over this District, and over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, necessarily precludes the idea of exclusive legislative jurisdiction anywhere else.

Congress has power to admit new States, and

Congress has power to make needful rules and regulations for the disposition and sale of the public lands. For the full and complete exercise of these powers, it is not necessary that it should prescribe the rules and regulations for the government of the society or the people which may settle upon the public domain; and by the specified enumeration made as to the places where Congress can exercise exclusive legislation, it must follow, under the approved principles of construction of the Constitution, that it can rightfully exercise this exclusive legislation nowhere else. The Legislature of Virginia, then, has spoken well when she informs you, "that under no circumstances will this body recognize as binding any enactment of the Federal Government which has for its object the prohibition of slavery in any Territory to be acquired by conquest or treaty;" and most cheerfully do I endorse and adopt the opinion expressed by General Cass in his letter to Mr. Nicholson:

"I am satisfied, from all I have seen and heard here, that a successful attempt to ingraft the principles of the Wilmot proviso upon the legislation of this Government, and to apply them to new territory, should new territory be acquired, would seriously affect our tranquillity. I do not suffer myself to foresee, or to foretell, the consequences that would ensue; for I trust and believe there is good sense and good feeling enough in the country to avoid them, by avoiding all occasions which might lead to them.

"Briefly, then, I am opposed to the exercise of any jurisdiction by Congress over this matter; because I do not see in the Constitution any grant of the requisite power to Congress; and I am not disposed to extend a doubtful precedent beyond its necessity—the establishment of Territorial Governments when needed—leaving to the inhabitants all the rights compatible with the relations they bear to the Confederation."

These opinions are confirmed from the fact, that Mr. Madison proposed, and the Convention referred, August 18, 1787, the distinctive propositions to confer on Congress the power—

1. To dispose of the unappropriated lands of the United States.
2. To institute temporary governments for new States arising therein.

The first proposition was so amended by the convention as to read as we now find it in the Constitution; the second was rejected, and the power conferred to admit new States into the Union.

Here I am free to admit that Congress heretofore has claimed and exercised the right of legislation over this subject in the Territories, and that all portions of the country have acquiesced in this action. But, at the same time, it must be conceded, on the other hand, that no such exorbitant, unjust, grasping pretension, has ever before been put forth to fasten this law of exclusion of one-half of the Union from all the territory owned by the United States. It must also be conceded, that the action of Congress has been heretofore taken without a serious discussion of the power—a proper regard having at all previous time been manifested for the rights, feelings, and interests, of the different sections of the Union. I have a high regard for our predecessors, their wisdom, moderation, and patriotism; but they have never been intrusted with the power of framing a Constitution. The same oath to support this same Constitution was administered to them as we have taken; and a precedent, merely as a precedent, has but little weight with me. A sound precedent is only that which is sustained by sound reason, and which when followed works no injustice. *Stare decisis*

is the cry and principle of a tyrant. Washington signed a bank charter, and so did Mr. Madison. The whole country for a time acquiesced and submitted without a murmur to this legislation; but it never changed my view of the constitutional power of Congress to erect a gigantic moneyed corporation, which, without responsibility to the people, with no guiding principle but self-interest, should control the business operations of the country, determine the amount of currency which should circulate, and thus decide the prices of the products of labor at will. On full discussion, however, the people have reversed the precedent, and in my opinion, rightfully. Tariffs for protection, conferring benefits on one portion of society and burdens on the other, have been sanctioned; but no one will contend that these precedents have settled the constitutional power of Congress. Alien and sedition laws have heretofore been enacted, and received the sanction of our courts; voluntary bankrupt laws submitted to; and, indeed, there is no enormity which can be named for which a precedent may not be found in the statute book. Again: in the history of Congress, precedent after precedent may be found against the exercise of certain powers: are such precedents to be of no consideration? How often has the power to enter upon a general system of internal improvement been denied by one Congress; and yet the same question arises in fresh vigor, and no regard whatever is paid to the past action of Congress. I reject precedent, as decisive of nothing. But it must also be remembered, that in the legislation of Congress heretofore, on the subject of slavery, great moderation and a proper regard for the interests of all the Union have been maintained.

No just ground of complaint, no odious and insulting exclusions have been attempted; and I might even now venture the assertion, that any legislation by this Congress which was based upon the same feeling of fraternal regard, founded in the same spirit of conciliation, justice to all, and compromise, though of doubtful authority, would be acquiesced in by the whole country.

On this principle I have voted heretofore, not deeming it wise to withhold my vote from measures which were demanded by the public exigencies because there were inserted into the same powers of a doubtful character. I have recognized the Missouri compromise as a means of settling this vexed, perplexing, and dangerous question; and while I could not, and would not, propose this principle, I do believe the people of the South will acquiesce in this agreement, which was once forced upon them. Though worsted by the contract, they will adhere to its terms, if they are observed in good faith by our northern brethren.

But we now have a proposition submitted for our adoption which is not only unequal and unjust, but insulting, degrading, contemptible, to the very last degree. The people of one-half of the States of this Union are to be told that their presence, with their property, their household, upon the common property of us all—upon the territory won by our common valor, and purchased out of a common treasury—is not to be tolerated; that it would pollute the very soil which is the common inheritance of us all. When such legislation is attempted, we shall inquire narrowly into your power—into the grant under which you act.

Where, then, resides the power to legislate for the Territories? I unhesitatingly answer, in the language of General Cass in the Nicholson letter, "in the people of the Territories, *under the general principles of the Constitution.*" It cannot be that any man who is born a freeman can be made a slave by the legitimate action of any constituted authority known to our republican institutions. The inalienable rights of every such man are, life, liberty, and the pursuit of happiness; and every just government is derived from the consent of the governed.

A tyranny is a government where the people have no voice in the laws which govern them.

A republic, on the contrary, is a government where the people have a voice in the enactment of all the laws which prevail in the society in which they live.

Ours is a republic. Our people are republicans, and are accustomed to exercise the rights of freemen; and I feel unwilling to adopt any doctrine which deprives them of their high inherent prerogatives. As to the rights of the emigrant to the Territories, I think they are correctly set forth by John Taylor, of Caroline—not General Zachary Taylor, who has never made up his mind, or has not had time to form an opinion, on any political question, except that he is in favor of the Constitution, which is somewhat in advance of most of his party, who, I believe, have long since regarded the Constitution as an obsolete idea. He says:

"But this feudal power of annexing conditions to the settlement of a conquered or acquired territory, by the government of the country making the acquisition, has ever been exploded as tyrannical both here and in England. One of our principles in the colonial state was, that emigrants to such territories carried with them their native rights. The colonists claimed the rights of Englishmen, and not only obtained them, but have, I hope, greatly extended them. But this would not be the case if our emigrants should be subjected to a diminution of their native rights by the pleasure of Congress. All of them enjoyed the right of forming local constitutions and laws before their emigration. If Congress cannot legislate over the States from whence they removed, and may do so by annexing conditions to a trust over that which the emigrants from these States may create, it is obvious that these citizens must have lost some very important native rights by an emigration from one part of our country to another. If the colonists emigrating from England were correct in asserting by force of arms that they brought with them all the rights conferred by the English system of government, our emigrants may also contend that they carry with them all the rights conferred by our system. *Among these, the unconditional right to make their own local constitutions and laws, without being subject to any conditions imposed by an extraneous authority, has been the most important, and universally exercised by every State in the Union.*"

I do not believe it can be successfully contended, that a citizen of the United States loses any of his rights of person and property by a removal from any one of the States to any territory which belongs to the United States. It becomes, then, important to define the distinction which exists between a Territory and a State. A State of this Union, then, is a sovereignty having defined limits, and exclusive and uncontrolled and uncontrollable jurisdiction over all matters which pertain to her domestic peace and general welfare, except so far as she may have delegated certain powers to the General Government, and submitted to certain limited restrictions in the Constitution of the United States.

A territory has no exact fixed limits which cannot be changed at the pleasure of Congress. The

people have the right to form their own social regulations, with certain restrictions. And these are, 1st, that Congress has the right or ownership of the soil, and the undoubted power to make all needful rules and regulations for its sale or disposition; 2d, the people of the United States have the ultimate sovereignty over their country or territory, and have such an interest in the common soil, that no barrier raised to the free ingress and egress of all the people of the United States, of each and every citizen, with his family, his property, and all his household, that he has a right to control, in any one of the States, will be valid and binding, because, being the common property, it is impossible for a few to enter and appropriate to themselves all the territory in which they live. The Territorial Government cannot be a sovereignty but by the consent of the people of the United States; and the Constitution has prescribed the manner in which that consent may be given in the admission of new States into this Union. They are restricted by the old maxim, *sic utere tuo, ut alienum non laedas*. They may consult for their own good and prosperity; but they must not, they cannot, in so doing, impair the rights of others. Our immense public domain belongs to the people of the whole Union; the citizens of the United States are tenants in common of a vast country, and the settlement and occupancy of this common tract of land by some, cannot operate to the prejudice of others who desire to occupy; and whatever is recognized as property in any one of the States must be recognized as property in each and every Territory, and the settlers would be bound in good faith to protect each other in the entirety of his rights; and should laws and regulations be adopted, which deprived any citizen from any State in this Union, of his liberty or his property, it would be usurpation, fraud, and revolution. Where it was attempted, it could be maintained only by force. It is true, for every right there is a remedy, and the Constitution of the United States provides—

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

The right of the citizen of the United States would arise under the Constitution, and the arm of the Judiciary would be extended over him, and it would be the duty of the Executive to maintain him in the full possession of his rights as they may be determined. It is in this connection and under this view alone there is much force and plausibility in the position that Congress might interpose to protect the citizen in his rights of property. What is this Government worth, unless its aid can be invoked for the shield and protection of the citizen? Whenever the American citizen looks upon the glorious flag of our Union, waving in triumph over any territory or any water which is the common property of the whole people, he feels, with a just sensation of pride, that the arm which upheld that flagstaff bears on it the buckler which shields him in the enjoyment of all his rights of person and property. When my slave goes aboard a merchantman, and sets sail on the briny deep, he is my slave still, and the authorities of the United States are bound to protect me against assault, trespass, and the theft of my property. All the rivers of

the West are reserved, by ordinances and laws of the United States, as common highways for all the citizens of the several States. I enter the Ohio river with my negro, the boat moors to the Ohio bank, and he escapes: under the clause of the Constitution for the delivery of fugitive slaves, the courts are bound, and they have so decided often, to deliver him back into my hands. But if I should leave this common highway reserved for all the citizens of all the States, and voluntarily take my slave into the State of Ohio, they hold (I think erroneously) that I am not entitled any longer to the services of my negro. Here may be seen the exact distinction between a sovereign State and a Territorial Government. The one legislates for the best interests of her people, without regard for the rights or interests of others, except so far as the State is restricted by the Constitution of the United States. The other must legislate subordinate to the Constitution and the right of each citizen of all the States which have a common interest in a common property; and while it might be in their power to enlarge the rights, privileges, and immunities of the citizen, it must be clear that they can adopt no law or regulation restricting those rights of person or property.

The next question which lies before me is, does the Constitution regard slaves merely as persons or as property? I should never think of arguing this point but for the fact that it is most gravely asserted that the Constitution does not recognize slaves as property, but as persons merely, when the whole history of its formation shows that without this recognition, the glorious Constitution under which we live had never been adopted. Without argument of my own, I shall content myself with two northern authorities of great weight.

1st. Mr. Webster, in his great argument before the Supreme Court, in the case of *Graves vs. Slaughter*, thus expresses his opinion:

"The Constitution recognizes slaves as property. Slaves escaping from the State in which they are held to service and labor, may be arrested in other States, and carried back to the State from which they escaped. The right to take them up, is an acknowledgment of the right of property in them. The Constitution was adopted during the existence of slavery in more than one-half of the States; and thus the protection of this right of property, in the intercourse between the States, became a duty under the Constitution."

In the decision of the same case, Mr. Justice Baldwin, than whom a better or purer man never lived, thus speaks:

"I feel bound to consider slaves as property, by the law of the States, before the adoption of the Constitution, and from the first settlement of the colonies; that this right of property exists independently of the Constitution, which does not create, but recognizes and protects it from violation, by any law or regulation of any State, in the cases to which the Constitution applies."

"It was a principle of the Revolution, and the practical construction of the Declaration of Independence, that 'necessity or expediency' justified 'the refusal of liberty, in certain circumstances, to persons of a particular color'; and that those to whom these services and labor were due, were their 'owners.' (1 *Laws U. S.* 24, 25.) In the 7th article of the preliminary treaty of peace with Great Britain, there is this expression, 'negroes and other property.' (*Ibid.* 198.) Also in the 7th article of the definitive treaty, (*ibid.* 204,) which conclusively shows the then accepted understanding of the country; and that it was not different after the adoption of the Constitution, appears as conclusively, by the 1st article of the treaty of Ghent, which refers to 'any slaves or other private property.' (*Ibid.* 694.) It would be a strange position, indeed, if we were to consider slaves as persons merely, and not property, in our commercial relations with foreign nations, and yet declare them to be private property in our diplomatic

relations with them, and in the most solemn international acts from 1782 to 1815."

Again:

"If, however, the owner of slaves in Maryland, in transporting them to Kentucky, passes through Pennsylvania or Ohio, no law of either State could take away or affect his right of property, nor, if passing from one slave State to another, accident or distress should compel him to touch at any place within a State where slavery did not exist. Such transit of property, whether of slaves or sales of goods, is lawful commerce among the several States, which none can prohibit or regulate, which the Constitution protects, and Congress may and ought to preserve from violation."

The soundness of these views are so clear and conclusive, that I would deem it a work of supererogation to add another word.

My conclusions, founded in the principles and provisions of the Constitution, and sustained by every consideration of justice, equality, and sound reason, are these—

1. Slaves are property, recognized by the Constitution.

2. The territory belonging to the United States is the common property of the people of the States, and that principle of equality and justice which pervades every line of the Constitution guarantees to every citizen the right to settle upon this common property, with his children, his men-servants, and his maid-servants, and every other species of property recognized in the United States, which he may choose to carry with him.

3. Congress has no jurisdiction over this subject, further than to protect the citizen in the full and complete enjoyment of all his rights of person and property.

4. The people of the territory have the power to exercise all their native and inherent rights of self-government, restrained and circumscribed so to exercise that power as not to infringe upon the rights and powers of Congress, as landlord, and of the people of the United States, who have a common and indefeasible right to enter and settle upon the common inheritance.

5. Should the Territorial Legislatures pass the boundaries of their powers, and deny to any individual the full possession of his rights, his protection is in an appeal to the Judiciary of the United States. Should his rights be denied him, then his next appeal is to revolution, if the grievance be so great as to require it. Then, of course, the strongest must prevail.

One word as to a very acute and ingenious argument that was made by the very worthy gentleman from New York, [Mr. MURPHY,] that Mexican laws, which prevailed in New Mexico and California prior to their cession to the United States, which prohibited slavery, are still in force, and require a formal repeal before a southern man, with his slaves, could enter and occupy that country. This argument is answered by the fact that the change of owners operated as a repeal of all the laws and customs promulgated and enforced by the prior sovereign, inconsistent with the rights and privileges of the subsequent owner. It must be apparent, that the very moment the inhabitants of these Territories become American citizens, the right of trial by jury, the right of conscience, of liberty of speech, and other invaluable privileges, attach and throw their protecting power around them. But it cannot be that American citizens, on American soil, are to look to Mexican statutes for

the determination and muniments of his rights of person and property.

The gentleman from Massachusetts, [Mr. HUBBARD,] after his effort to show that Congress had the exclusive power to legislate for the Territories, asserted the other day that the only question for us to decide was, is it expedient to establish slavery in the Territories? He then assumed that slavery was an evil—a social and political evil—admitted to be such by southern statesmen; spoke of Virginia as an abomination of desolation, and of the weakness of South Carolina; and attempted to draw a picture of the miseries attendant upon slavery. Now, sir, I deny his assumption. I do not believe it to be an evil; but I do believe further, that the hour which would strike the shackles from the slave would be the one of greatest calamity, fraught with direst misery and woe to him and his posterity. I assure the gentleman that if there be a just invocation of his sympathy anywhere, it does not proceed from the condition of the slave, but rather from the effects of the contact upon the master. The white man, not the black man, deserves his sympathy, for on him devolves the duty and the responsibility of protection, care, and maintenance, and surely these should be allowed to judge for themselves. But if he has sympathy for the slave, while I could never hope to change a rooted and fixed idea that slavery is an evil, I would have a hope of convincing even him, that the diffusion of it over a larger space is the best means of alleviating that evil. In crowded populations the profits of labor are not sufficient to admit of any indul-

gence, either in food or raiment, on the part of the master; but, as you extend the area in which he may be employed, you will find his comforts increase and his happiness enlarged. But I will not enter this field, though the fact is susceptible of demonstration, because I know that it will be love's labor lost. But I must be permitted to doubt the sincerity of any man who expresses a sympathy for his black fellow-citizens, and then adopts a policy which hedges him in his prescribed limits. He either does not understand what he is about, or, understanding, he has some other object to accomplish which he is not so ready to avow. But I believe all this sympathy is hollow-hearted hypocrisy. The very consideration in the whole controversy is not sympathy for the slave; no, it is not, it cannot be that. It is political power. Here is the point which lies at the basis of all this shedding of tears. It is to throw the southern States into a helpless, hopeless minority. It is to make us the slaves of an unscrupulous majority, who may control the legislation of this country, so as to fasten upon that minority the burdens of this Government, by which our rich and valuable productions will be controlled to enhance the profits of northern capital—to fasten upon this country a system of measures by which the rich will grow richer, and the poor poorer. But I tell you, beware. You may have the giant's power, but it will be an abomination of desolation to you to use it like a giant. He who submits to injustice and insult deserves to be a slave.

